

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

STAR WASTE SERVICES, LLC;)	
ENGLUND BROS. COMPANY, INC.;)	
STAR WASTE DISPOSAL, LLC;)	Civil No.: <u>1:07-CV-127</u>
AMERICAN WASTE NETWORK, LLC;)	
AMERICAN WASTE SERVICES, LLC;)	JUDGE: Collier
LADIES FIRST WASTE, LLC,)	
Plaintiffs,)	MAGISTRATE: Carter
)	
v.)	
)	Jury Trial Demanded
U.S. WASTE, LLC;)	
CLARENCE JOSEPH EMMER;)	
DAN FRANKLIN EMMER, SR.;)	
DAN FRANKLIN EMMER, JR.;)	
JASON R. EMMER;)	
GEORGE FRANKLIN EMMER;)	
BUD FRANKLIN EMMER, JR.,)	
Defendants.)	

MOTION FOR SUMMARY JUDGMENT

Defendants, U.S. Waste, LLC; Clarence Joseph Emmer; Dan Franklin Emmer, Sr.; Dan Franklin Emmer, Jr.; Jason R. Emmer; and George Franklin Emmer (“Defendants”)¹, by and through counsel, pursuant to Rules 56, Federal Rules of Civil Procedure, hereby move for summary judgment as to all claims asserted by Plaintiffs in this action. Defendants show that there are no genuine issues of material fact, and they are entitled to judgment as a matter of law.

Defendants submit they are entitled to summary judgment based on the following:

1. The Plaintiffs were not damaged in business or property;
2. The Defendants were not the direct and proximate cause of any damage incurred by the Plaintiffs;

¹ Defendant Bud Franklin Emmer, Jr. was voluntarily dismissed from this action December 18, 2008. (Court Doc. No. 66).

3. Defendants did not engage in a pattern of racketeering activity in violation of 18 U.S.C. §1962(c).
4. Plaintiffs are judicially estopped from pursuing this case by positions they have taken in other cases;
5. Plaintiffs have failed to state a RICO conspiracy claim against the Defendants
6. Plaintiffs American Waste Network, LLC, American Waste Services, LLC, and Ladies First Waste, LLC were not formed until February, 2007, (Court Doc. No. 54, Amended RICO Complaint pp. 5, 6 and 7) and therefore, could not have been damaged by any of the Defendants in this case, and
7. Plaintiff Englund Brothers Co., Inc. makes no specific claims identified to it in the Amended Complaint.

In support of this Motion, Defendants rely on the following:

1. All pleadings in this case;
2. Defendants Statement of Undisputed Facts;
3. Defendants Memorandum of Law in Support of their Motion for Summary Judgment;
4. Appendix in Support of Motion for Summary Judgment; and
5. Affidavit of Jill Crouch.

All of these are filed simultaneously herewith. For the reasons discussed in the Memorandum, there is no genuine issue of material fact on any of Plaintiffs' claims such that Defendants are entitled to judgment as a matter of law.

WHEREFORE, Defendants respectfully request that their Motion for Summary Judgment be granted and that Plaintiffs' Complaint against them be dismissed with prejudice in its entirety.

Respectfully submitted,

MILLER & MARTIN PLLC

By: /s/ C. Crews Townsend
C. Crews Townsend, BPR No. 12274
A. Chantelle Roberson, BPR No. 19565
1000 Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289
Telephone: (423) 756-6600
Facsimile: (423) 785-8480
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing pleading has been filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail and/or facsimile or hand delivery. Parties may access this filing through the Court's electronic filing system.

This 27th day of February, 2009.

MILLER & MARTIN PLLC

By: /s/ C. Crews Townsend